IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P.No.7212 of 2004
Date of Decision: 10.5.2007

Bal Krishan Nayar and another Vs. The Financial Commissioner (Appeals-II),Punjab and others

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Present : Mr.Vikas Sagar, Advocate for the petitioners.
Mr. N.D.S. Mann, Addl.A.G. Punjab.
Mr.Amandeep Singh, Advocate.
Mr.Sumeet Mahajan, Advocate for respondents no.6 to 9.

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CORAM : HON'BLE MR.JUSTICE P. SATHASIVAM
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

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RAJIVE BHALLA, J

Challenge in this writ petition is to the orders dated 10.10.1994, 7.10.1999, 4.5.2001 and 29.4.2003, passed by the Collector, (Sub Divisional Magistrate), Ludhiana, the Additional Commissioner (Appeals), Patiala Division, Patiala, and the Financial Commissioner, Appeals-II, Punjab, Chandigarh respectively.

Apart from the aforementioned prayers,it is also prayed that a direction be issued to respondents no.1 to 3 to sanction mutations of

ownership in favour of the petitioners, by cancelling the impugned mutations, sanctioned on the basis of illegal sale deeds. The petitioners' claim that a suit for specific performance was decreed by a civil Court on 17.9.1987. The first appeal as also the Regular Second Appeal, filed by the defendants were dismissed. In execution, sale deed No.26865 dated 3.2.1994 was executed by the Local Commissioner appointed by the executing Court. During the pendency of suit, two sale deeds bearing No.13471 and 13607 dated 21.2.1984 and 24.2.1984 were executed, to frustrate the decree. Mutation Nos.20218 and 20219 were sanctioned on 7.3.1984 with respect to the sale deeds. A civil suit challenging the aforementioned sale deeds was dismissed but an appeal is pending.

The petitioners' claim to have approached the Collector, Ludhiana, for cancellation of the aforementioned mutations and for sanction of mutations in their favour. The Collector, dismissed the application by holding that he had no authority, to set aside the said mutations. The petitioners, thereafter, preferred an appeal, before the Commissioner, Patiala Division, Patiala. Vide order dated 7.10.1999,the Commissioner held as follows :

> "As far as sanctioning the mutations on the basis of registered sale deed dated 3.2.1994, the Collector should have ordered the Circle Revenue Officer to get the mutations entered and decide it according to rules. But the Collector did not touch this point. So the appeal is partly accepted and it is ordered that appellants will apply to the concerned Circle Revenue Officer (Assistant Collector, Iind Grade) for getting the mutation

entered and Assistant Collector, Iind Grade shall get the mutation entered according to the sale deed dated 3.2.1994 and decide it as per rules after hearing the interested parties within 30 days from the receipt of the application."

The petitioners, thereafter, filed a revision before the Financial Commissioner, (Appeals-II), Punjab, which was dismissed for non compliance of the Court's order, as well as for non appearance of the petitioners on 4.5.2001. An application for recalling of the aforementioned order was dismissed vide order dated 29.4.2003 on the ground that the applicant was unable to justify the filing of the restoration application after a delay of 1.1/2 years.

We have heard learned counsel for the parties and perused the paper book.

A perusal of the order passed by the learned Commissioner, reproduced herein before, reveals that the petitioners were directed to apply to the concerned Circle Revenue Officer (Assistant Collector, IInd Grade) for getting a mutation entered in their favour. Faced with the aforementioned situation, counsel for the petitioners prays that the present petition be dismissed as withdrawn, so as to enable them to comply with the order dated 7.10.1999 passed by the Commissioner, Patiala Division, Patiala, without prejudice to their rights to challenge the sale deeds and the mutations in favour of the private respondents,

In view of the aforementioned statement, the present petition is

dismissed as withdrawn, in terms of the statement made by counsel for the petitioners, as also with the aforementioned liberty but with no order as to costs.

(RAJIVE BHALLA)
JUDGE

10.5.2007
GS

(P. SATHASIVAM)
JUDGE